



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Mr. W. C. Jackson  
County Attorney  
Zavalla County  
Crystal City, Texas

Dear Mr. Jackson:

Opinion No. O-5022

Re: "Withholding agent" with re-  
spect to salary and fees of  
County Attorney, under Sub-  
chapter D, Sections 450-476,  
Federal Revenue Act of 1942.

You request our opinion on the following question:

Where a County Attorney's salary is paid by the  
County Clerk, and his fees are collected from convicted  
defendants, who should hold out and report the five per  
cent victory tax levied by Sec. 450 of the Act cited in  
the caption?

Sec. 455, subsection "b" defines wages in part  
as follows:

"The term 'wages' means all remuneration  
(other than fees paid to a public official)  
for services performed by an employee for his  
employer. . . ."

The same section, in subsection "d", defines "em-  
ployee" so as to include an officer or employee of a county.

In Sec. 457, subsection "a" provides:

"The tax required to be withheld by  
section 455 shall be collected by the per-  
son having control of the payment of such  
wages by deducting such amount from such  
wages as and when paid. As used in this  
subsection, the term 'person' includes of-  
ficers and employees of the United States,  
or of a State, Territory, or any political

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subdivision thereof, or of the District of Columbia, or any agency or instrumentality of any one or more of the foregoing."

Since the County Clerk has "control of the payment" of the salary of the County Attorney, he is the "withholding agent" under the Act, who should hold out the tax by reducing the amount of the warrant issued to the County Clerk by the amount thereof, and report it. Payment of the tax, of course, must be made through the joint action of the Clerk in issuing and the Treasurer in paying a warrant therefor. "Fees" paid to the County Attorney by convicted defendants are not "wages" under the Act, and no tax is required to be withheld with respect to such fees.

Answering your question as to whether the tax is to be paid over to the Federal government monthly, quarterly or annually, we direct your attention to the following provisions of Section 466:

" . . . every person required to withhold and collect any tax under Section 466 shall make a return and pay such tax on or before the last day of the month following the close of each quarter of each calendar year. . . . "

It thus appears that the tax is to be paid over quarterly.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*R. W. Fairchild*

R. W. Fairchild  
Assistant

REF-MA

APPROVED DEC 21, 1942

*Gerald C. Mann*

ATTORNEY GENERAL OF TEXAS

